

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROBERT ELLIOTT, an Individual,

11 Plaintiff,

v.

12 GENUINE PARTS COMPANY, a Georgia
13 Corporation doing business in Washington
14 as GENUINE PARTS COMPANY and
15 NAPA AUTO PARTS,

Defendant.

CASE NO. C17-0692-JCC

PROTECTIVE ORDER

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17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or
19 private information for which special protection may be warranted. Accordingly, the parties
20 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
21 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
22 protection on all disclosures or responses to discovery, the protection it affords from public
23 disclosure and use extends only to the limited information or items that are entitled to confidential
24 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
25 confidential information under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: documents produced by Defendant that involve the disclosure of
4 trade secrets, confidential, private, financial, personal, medical or business information of Defendant
5 and/or GPC’s current or former employees and customers, and those documents produced by Plaintiff
6 that involve the disclosure of financial and/or medical information of Plaintiff.

7 3. SCOPE

8 The protections conferred by this agreement cover not only confidential material (as
9 defined above), but also (1) any information copied or extracted from confidential material; (2) all
10 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
11 conversations, or presentations by parties or their counsel that might reveal confidential material.
12 However, the protections conferred by this agreement do not cover information that is in the public
13 domain or becomes part of the public domain through trial or otherwise.

14 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

15 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
16 produced by another party or by a non-party in connection with this case only for prosecuting,
17 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
18 the categories of persons and under the conditions described in this agreement. Confidential
19 material must be stored and maintained by a receiving party at a location and in a secure manner
20 that ensures that access is limited to the persons authorized under this agreement.

21 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
22 the court or permitted in writing by the designating party, a receiving party may disclose any
23 confidential material only to:

24 (a) the receiving party’s counsel of record in this action, as well as employees of
25 counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement:

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

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1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
3 non-party that designates information or items for protection under this agreement must take care
4 to limit any such designation to specific material that qualifies under the appropriate standards.
5 The designating party must designate for protection only those parts of material, documents, items,
6 or oral or written communications that qualify, so that other portions of the material, documents,
7 items, or communications for which protection is not warranted are not swept unjustifiably within
8 the ambit of this agreement. Mass, indiscriminate, or routinized designations are prohibited.
9 Designations that are shown to be clearly unjustified or that have been made for an improper
10 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose
11 unnecessary expenses and burdens on other parties) expose the designating party to sanctions. If
12 it comes to a designating party's attention that information or items that it designated for protection
13 do not qualify for protection, the designating party must promptly notify all other parties that it is
14 withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
16 (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
17 disclosure or discovery material that qualifies for protection under this agreement must be clearly
18 so designated before or when the material is disclosed or produced.

19 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
21 the designating party must affix the word "CONFIDENTIAL" to each page that contains
22 confidential material. If only a portion or portions of the material on a page qualifies for protection,
23 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
24 markings in the margins).

25 (b) Testimony given in deposition or in other pretrial proceedings: the parties and
26 any participating non-parties must identify on the record, during the deposition or other pretrial

1 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
2 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
3 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
4 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
5 at trial, the issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: the producing party must affix in a prominent place on the
7 exterior of the container or containers in which the information or item is stored the word
8 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
9 the producing party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party's
12 right to secure protection under this agreement for such material. Upon timely correction of a
13 designation, the receiving party must make reasonable efforts to ensure that the material is treated
14 in accordance with the provisions of this agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
23 confidential designations without court involvement. Any motion regarding confidential
24 designations or for a protective order must include a certification, in the motion or in a declaration
25 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
26 affected parties in an effort to resolve the dispute without court action. The certification must list

1 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
2 to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under Local
5 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
9 the material in question as confidential until the court rules on the challenge.

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
11 LITIGATION

12 If a party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
14 must:

15 (a) promptly notify the designating party in writing and include a copy of the subpoena or
16 court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
18 other litigation that some or all of the material covered by the subpoena or order is subject to this
19 agreement. Such notification shall include a copy of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 designating party whose confidential material may be affected.

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
24 material to any person or in any circumstance not authorized under this agreement, the receiving
25 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
26 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the

1 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
2 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
3 Bound” that is attached hereto as Exhibit A.

4 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
5 **MATERIAL**

6 When a producing party gives notice to receiving parties that certain inadvertently
7 produced material is subject to a claim of privilege or other protection, the obligations of the
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
9 is not intended to modify whatever procedure may be established in an e-discovery order or
10 agreement that provides for production without prior privilege review. The parties agree to the
11 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

12 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

13 Within 60 days after the termination of this action, including all appeals, each receiving
14 party must return all confidential material to the producing party, including all copies, extracts and
15 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
19 product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until a
21 designating party agrees otherwise in writing or a court orders otherwise.

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23 *(Signatures on Following Page)*
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3 DATED: 1/22/2018

/s/Henry Bradney, Esq.

4 Attorneys for Plaintiff
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6 DATED: 1/22/2018

/s/Lisa Knottek Simpson, Esq.

7 Attorneys for Defendant
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9 PURSUANT TO STIPULATION, IT IS SO ORDERED
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11 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
12 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
13 in any other court, constitute a waiver by the producing party of any privilege applicable to those
14 documents, including the attorney-client privilege, attorney work-product protection, or any other
privilege or protection recognized by law.

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16 DATED this 25th day of January 2018.

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John C. Coughenour
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22 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ in the case of Robert Elliott v. Genuine Parts Company, Case No. 2:17-CV-00692. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: